

S(F)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

2007 JAN 23 PM 2:37

FORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form) ⑦ 61. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: NOTE: If more than one plaintiff files this action and seeks *in forma pauperis* status, each plaintiff must submit an *in forma pauperis* application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.

TYRONE CARMICHAEL

-VS-

B. Full Name(s) of Defendant(s) NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.

1. F. Nitotra C.O.
3. Jane Doe C.O.
5. John Doe C.O.

2. John Doe C.O.

4. John Doe C.O.

6. A. Brigerac C.O.

7. S. Heider C.O.

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION NOTE: To list additional plaintiffs, use this format on another sheet of paper

Name and Prisoner Number of Plaintiff:

Tyrone Carmichael

Present Place of Confinement & Address:

Southport Correctional Facility

P.O. Box 2000, Pine City, New York 14871 - 2000

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

DEFENDANT'S INFORMATION NOTE: To provide information about more defendants than there is room for here, use this format on another sheet of paper.

Name of Defendant: F. Nicotra

(If applicable) Official Position of Defendant: Corrections officer

(If applicable) Defendant is Sued in X Individual and/or Official Capacity

Address of Defendant: Attica Correctional Facility, Box 149, Attica
N.Y. 14011 - 0149

Name of Defendant: Jane Doe

(If applicable) Official Position of Defendant: Corrections officer

(If applicable) Defendant is Sued in X Individual and/or Official Capacity

Address of Defendant: Attica Correctional Facility, Box 149, Attica
N.Y. 14011 - 0149

Name of Defendant: John Doe

(If applicable) Official Position of Defendant: Corrections officer

(If applicable) Defendant is Sued in X Individual and/or Official Capacity

Address of Defendant: Attica Correctional Facility, Box 149, Attica
N.Y. 14011 - 0149

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action? Yes No X

Please complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:
Plaintiff(s): _____
Defendant(s): _____

2. Court (if federal court, name the district; if state court, name the county): _____

3. Docket or Index Number: _____

4. Name of Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?
• Is it still pending? Yes _____ No _____
 • If not, give the approximate date it was resolved. _____
• Disposition (check the boxes which apply):
 Dismissed (check the box which indicates why it was dismissed)
 By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
 By court for failure to exhaust administrative remedies;
 By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
 By court due to your voluntary withdrawal of claim;
 Judgment upon motion or after trial entered for
 plaintiff
 defendant.

Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes _____ No X

Yes, complete the next section. NOTE: If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.

Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. District Court _____

3. Docket Number: _____

4. Name of District or Magistrate Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

• Is it still pending? Yes _____ No _____

• If not, give the approximate date it was resolved: _____

• Disposition (check the boxes which apply):

Dismissed (check the box which indicates why it was dismissed):

- By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- By court for failure to exhaust administrative remedies;
- By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- By court due to your voluntary withdrawal of claim;

Judgment upon motion or after trial entered for

plaintiff

defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

Religion	• Access to the Courts	• Search & Seizure
Free Speech	• False Arrest	• Malicious Prosecution
Due Process	• Excessive Force	• Denial of Medical Treatment
Equal Protection	• Failure to Protect	• Right to Counsel

Please note that it is not enough to just list the ground(s) for your action. You must include a statement of the facts which you believe support each of your claims.

F.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of claim asserted." Fair notice is that which will enable the adverse party to answer and prepare for trial.

John Doe

corrections officer

Defendant is Sued in individual capacity

Attica Correctional Facility, Box 149, Attica, N.Y.

14011-0144

John Doe

corrections officer

Defendant is Sued in individual capacity

Attica Correctional Facility, Box 149, Attica, N.Y.

14011-0144

A. Brigerer

corrections officer

Defendant is Sued in individual capacity

Attica Correctional Facility, Box 149, Attica, N.Y.

14011-0144

S. Heider

corrections officer

Defendant is Sued in individual capacity

Attica Correctional Facility, Box 149, Attica, N.Y.

14011-0144

show the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simpsons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995).

Fed.R.Civ.P. 10(b) states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

A. FIRST CLAIM: On (date of the incident) or about July 5, 2006

defendant (give the name and position held of each defendant involved in this incident) L.D.S.
Jane Doe, 3 John Doe's, and F Nicotra

did the following to me (briefly state what each defendant named above did): My family on the outside of the jail can see inside the jail and they seen defendant Jane Doe having sex with inmates on the company Jane Doe found out I knew about it and had me assaulted on July 5, 2006, by defendant's F. Nicotra, John Doe 1, John Doe 2, and John Doe 3. On the above mentioned date, I was leaving off D-40-company on my way to chow and c.o. F. Nicotra told me to stop to the side. When all the inmates proceeded down stairs c.o. F. Nicotra told me to tuck my shirt in my pants. I looked down and my shirt was tucked in, I ask the c.o. what was he talking about and the c.o. punched me in my face and the 3 John Does began assaulting me with their buttons.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: All excessive use of force claim

The relief I am seeking for this claim is (briefly state the relief sought): I am seeking monetary compensation in the amount of three half million dollars

Exhaustion of Administrative Remedies

According to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

If you grieve and/or appeal this claim: Yes No X

If your answer is yes, state the result: _____

Did you appeal that decision: Yes _____ No _____

If your answer is yes, state the result: _____

Attach any documents which indicate that you have exhausted your administrative remedies regarding this claim.

If your answer is no, state why you did not: _____

B. SECOND CLAIM: On (date of the incident) or about August - December 2006 defendant (give the name and position held of each defendant involved in this incident) C.O.s

A. Brigena S. Heider

did the following to me (briefly state what each defendant named above did): From August - December defendants A. Brigena and S. Heider was flooding my cell with water and both defendants cut off the water in my sink and toilet. They was harassing me and threatening me. From September²³ - December the defendants were throwing my ~~removal~~ meals on the floor, and I was forced to eat my food off the floor. The 2 defendants was lying on me saying I was flooding my cell when they was the ones pouring water in my cell and they were in my cell and rip up my papers. My family outside the jail see what the C.O.s doing to me.

the constitutional basis for this claim under 42 U.S.C. § 1983 is cruel and unusual punishment

the relief I am seeking for this claim is (briefly state the relief sought): I am seeking monetary compensation in the amount of three } half million dollars

Exhaustion of Administrative Remedies

According to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Did you grieve and/or appeal this claim: Yes No _____

If your answer is yes, state the result: None

Did you appeal that decision: Yes No

If your answer is yes, state the result: _____

Attach any documents which indicate that you have exhausted your administrative remedies regarding this claim.

If your answer is no, state why you did not: I did not know about appealing the matter

If you have additional claims, use the above format to set them out on additional sheets of paper.

6. RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

I request monetary compensation and punitive damages in the total amount of Seven million dollars.

Do you want a jury trial? Yes No _____

declare under penalty of perjury that the foregoing is true and correct.

Executed on 1-18-07
(date)

NOTE: Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the court.

Tyronne Carmichael

Signature(s) of Plaintiff(s)